



HOAI: ADVOCATE GENERAL OF THE EUROPEAN COURT OF JUSTICE CONSIDERS MINIMUM AND MAXIMUM TARIFFS UNLAWFUL

Member Organisations of the Architects' Council of Europe express support to Germany for the HOAI

In June 2015, the European Commission launched an infringement procedure against Germany on the grounds that the German minimum compulsory tariffs for architects and engineers (*Honorarordnung für Architekten und Ingenieure – HOAI*) would allegedly violate the Services Directive by preventing professionals from other Member States from establishing and providing their services freely in Germany.

On 28 February 2019, the Advocate General of the European Court of Justice (ECJ), Maciej Szpunar, released his opinion which considered the minimum and maximum tariffs as unlawful. The tariffs were said to hinder cross border activities, because engineering and architecture firms could not enter the market and establish their own prices. Furthermore, he claimed that Germany had not proved that the independent statutory fee-scales for architects and engineers were suitable and necessary for quality assurance and consumer protection. Therefore, he proposed that the Court uphold the Commission's decision.

The leading German associations of architects and engineers, together with the Federal Government, strongly advocated maintaining the minimum and maximum tariffs and commissioned several advisory opinions. All studies commissioned in this context proved that there is no evidence to suggest that cross border activities are negatively affected by the presence of fee-scales. On the contrary, quality cannot be guaranteed where there is price dumping of architectural and engineering services. Moreover, the most economically advantageous tender, rather than cheapest price, has been recognised as a principle of the latest version of the Public Procurement Directive. Therefore, ACE finds it incomprehensible that the Advocate General did not follow the conclusive arguments given by the German government. ACE is strongly convinced that the minimum and maximum tariffs serve the common interest by:

- **Protecting customer's rights** through transparency of fees and related services for everyone, certainty of design costs, competition based on quality rather than price, higher quality and more positive results along with lower risks of dispute, amongst other benefits.
- **Supporting cross-border activities** by providing helpful descriptions of services and guidelines for providing these services. Insufficient language skills and knowledge of building regulations or relocation issues are the main reasons for not moving to another country.



- **Continuing to ensure** that courts have a basis on which to make awards during litigation, while public bodies have reference points that can be used when drawing up budgets for public works.

ACE still maintains that the HOAI does not constitute an obstacle to cross-border establishment and provision of architectural and engineering services in Europe, nor has the abolition of compulsory fee-scales in other Member States led to an increase in cross-border establishment in the past.